

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Expanding the Economic and Innovation	)	Docket No. 12-268
Opportunities of Spectrum Through Incentive	)	
Auctions	)	

**Comments of Globe LPTV LLC**

**Introduction**

1. Globe LPTV LLC ("Globe"), licensee of KFPB-LD, Globe, Arizona ("KFPB"), hereby provides its comments to the Federal Communication Commission's (the "Commission" or the "FCC") Notice of Proposed Rulemaking in the above captioned proceeding (the "NPRM").

**Operation of Globe LPTV LLC**

2. KFPB serves the Phoenix, Arizona DMA. It operates on digital channels 50-1 through 50-6. It also provides an audio service on 50-12.
3. Virtually all of the programming carried on KFPB-LD channels 50-1, 50-2, 50-3, 50-4, 50-5 and 50-6 is in Spanish. These channels serve the areas 1 million or more Hispanics, many of whom are new or recent immigrants. The programming offered on KFPB serves a wide range of needs of this historically underserved community. Programming has included and currently includes (i) local news and information; (ii) counseling, including information on important immigration topics; (iii) business related shows and information; (iv) spiritual guidance and worship services and (v) a local Spanish language talent show highlighting local artists. None of this programming is available on any of the full power, Class A or other LPTV stations in the DMA.
4. Channels 50 -3 through 50-6 are all locally operated and locally programmed channels. In addition to the programming noted in Paragraph 3 above, Channel 50-3 and 50-4 also offer live local programming five to seven days a week for one to four hours per day.

## **Displacement of Low Power Television and Television Translator Stations**

5. In Paragraphs 358 – 360, the Commission seeks comment on displacement procedures for LPTVs displaced as a result of the repacking process set forth in the NPRM.
6. In the NPRM, the Commission asks ...“after the repacking becomes effective and full power and Class A television stations have an early opportunity to file for a substitute channel ... [should an] initial filing window for low power television and television translator stations” be opened to permit the filing of displacement applications? NPRM Para. 360. Globe believes that an early displacement window such as that set forth by the Commission in the NPRM is in the public interest and should be adopted by the Commission. This will avoid unneeded delay and will, as the Commission points out, avoid stations at risk of displacement having to wait until actual interference occurs to file a displacement application.

## **The Public Interest Will Be Served By Avoiding Auctions in the Event of Mutual Exclusivity**

7. Paragraph 361 of the NPRM acknowledges that, in some markets, there may be two or more applicants for the same displacement channel, creating a mutually exclusive situation. The Commission indicates that “consistent with the requirements of Section 309(j) of the Communications Act, our rules require resolution of mutual exclusivity through competitive bidding.” Id. At Note 542. <sup>1</sup>

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<sup>1</sup>The Commission’s competitive bidding practices are set forth at 47 C.F.R Section 73.5000, et.seq. Many LPTV construction permits were obtained through competitive bidding. See, e.g., Auctions No. 25, No. 81 (only LPTV licenses involved raised \$834,600) or No. 85 (only LPTV licenses involved raised \$134,725). [www.fcc.gov/auctions](http://www.fcc.gov/auctions). To be sure, as the Commission notes in its statement on auctions at its website, “(t)he Act requires the FCC to use auctions to resolve mutually exclusive applications for initial licenses. Id. (emphasis added). It is unclear that Congress intended applicants to be subjected to two or more auctions for the same construction permit or license as may now occur to many LPTV licensees. It is the position of Globe that further inquiry is necessary on the issue of the applicability of Section 309(j) of the Communications Act to licensees who have already paid for spectrum once and are now expected to repurchase the same spectrum. This sort of spectrum “double jeopardy” flies in the face of usual commerce or auctions where the expectation of the buyer is that its purchase is final. See, generally, Law of Contracts, 4th ed., Calamari & Perillo (1977). Is it the position of the Commission that the billions of dollars expected to be paid by large telecommunication companies and other participants in the auction subject to this NPRM could expect that in five or ten years rapid technological growth may render the spectrum more valuable in other areas and therefore should be re-auctioned and the current winning bidders expected to buy the spectrum again if they want to continue with their original use? In essence, does that Commission advocate that what is billed as a purchase is in fact a rental and a rental that can be cancelled at any time without regard to the length of a license term previously issued by the Commission? Globe urges the Commission to resolve this issue as part of this or another proceeding before proceeding with the auction.

8. The Commission further notes that it may impose certain threshold criteria to avoid mutual exclusivity where doing so would serve the public interest. *Id.*
9. Globe strongly believes that the public interest will be served by imposing a set of selection priorities to choose among mutually exclusive applicants and only resorting to auctions in the event such priorities fail to resolve the conflict. Congress and the Commission created LPTVs to, *inter alia*, “bring TV service, including local service, to viewers ‘otherwise unserved or underserved’ by existing service providers.” Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, Report and Order, 19 FCC Rcd 19331, 19332 (2004) (“Digital LPTV Order”) (citing Notice of Proposed Rule Making, 45 F.R. 69178 (Oct. 17, 1980)). In the 21<sup>st</sup> Century, with the rise of social media, such viewers or communities may often mean niche groups that are frequently overlooked or ignored by the dominant media outlets, as opposed to purely a city or town as community may have meant in 20<sup>th</sup> Century jargon. Thus, many LPTVs serve as a local source of information for underserved, often minority, groups. These local LPTV operations ensure a diversity of viewpoints that are otherwise often completely unavailable – through any media outlet including either new or traditional media. The unique nature of LPTV, combining elements of 20<sup>th</sup> Century broadcast media with that of 21<sup>st</sup> Century social media, means that diverse viewpoints serving underserved markets can be economically and cost effectively communicated to the group. It is Globe’s experience that many of the programs that it airs on broadcast television when made available only on Internet media outlets, such as YouTube or at various websites, do not have the reach or impact of broadcast because very few of the intended recipients ever view them on those outlets. This lack of viewership creates little economic incentive to continue to create such programs despite the fact that there is a strong need if delivered through an appropriate medium. A broadcast environment presents a unique opportunity to serve a niche community on a platform that presents wide enough distribution to provide economic incentive to build a sustainable operation and continue to meet the needs of the underserved market.
10. Thus, when an LPTV is serving a niche or underserved community and providing locally produced programming of interest to that community, it is serving a uniquely democratizing purpose. There are few situations, within the context of broadcast media, that could be of greater public importance. At the same time, it will be an economic burden on such stations, even if financially sound, to expend revenue

preserving its license. Funds that would be better spent on continuing to build a sustainable television station and meeting the needs of the community it serves would instead be diverted to resolve the mutually exclusive conflict. Therefore, for these reasons, the public interest will be served by imposing a set of selection priorities to choose among mutually exclusive applicants and only resorting to auctions in the event such priorities fail to resolve the conflict.

### **Selection Priorities To Choose Among Mutually Exclusive Applicants**

11. The Commission utilizes selection priorities to choose among competing applicants in a number of different situations in various services.<sup>2</sup> Globe believes, as discussed below, that a point system similar to one utilized by the Media Bureau when selecting among competing applicants for non-commercial educational (“NCE”) radio and full power TV stations, provides a model on which LPTV selection criteria should be based. See 47 C.F.R. Section 73.7003.<sup>3</sup>
12. Under the requirements of Section 73.7003, applicants are awarded a pre-determined number of points for each of four criteria that they meet. The applicant with the highest number of points becomes the tentative selectee for the constructive permit. Using a point system akin to the NCE selection criteria permits evaluation of each mutually exclusive situation in context and the winner is likely to be the LPTV station which will best serve the public interest.
13. The criteria to be used differ in many instances from those established for NCE applicants. LPTV stations, by definition, serve a local community which on its face differentiates LPTV applicants from the full power television and AM and FM applicants in the NCE services. Thus, the criteria, while far from novel and in keeping with established Commission precedent, recognizes the unique contributions that an LPTV station may make to its local market.

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<sup>2</sup> For example, in the area of FM allocations, the Commission has long utilized a multipart test to distinguish among competing applicants for a new facility or a change of city of license. 47 U.S.C. Section 307(b). These priorities have changed as the Commission has developed its policy to promote the most efficient use of spectrum. See Policies to Promote Rural Radio Services and to Streamline Allotment Procedures, Second Report & Order, 26 Fcc Rcd 2556 (2011); Second Order on Reconsideration (October 12, 2012).

<sup>3</sup> The criteria under Section 73.7003 are (i) Established local applicant. Applicants receive three points if they have been local continuously for no fewer than two years immediately prior to the application (73.7003(b)(1)); (ii) Local Diversity of Ownership. Applicants receive two points if they have no attributable interest in the same service in which they seek a construction permit within the local market 73.7003(b)(2); (iii) State-wide network. Applicants receive two points if they do not meet 73.7003(b)(2) but meet the criteria for a state-wide educational network; (iv) Technical Parameters. One point for the applicant covering the largest geographic area and population with its relevant contours. In the event of a tie, the applicant with the fewest number of attributable existing authorizations in the same service on a national level will be awarded the construction permit.

14. The following are the priority criteria and the associated points for each item. The points will be cumulative and the applicant with the highest number of points will, subject to Commission license requirements, be awarded the mutually exclusive construction permit it seeks. In the event of a tie, the Commission will proceed with an auction.

1. First or Second Local Over the Air TV Service. 4 points. An LPTV station that provides the first or second local over the air TV service to a community within its coverage area shall be awarded four points. Coverage area should be defined as the area within a LPTV's protected contour.<sup>4</sup> Due to the allocation requirements of LPTVs, which are not allocated by city of license, but instead by the availability of spectrum within the intended service area, the city of license should not be determinative as to the relevant community for purposes of this criteria See Digital LPTV Order, 19 FCC Rcd 19331 at paras. 59 – 81. Instead, the LPTV applicant should be awarded the points set forth herein in the event that it provides a first or second local service to any community in its coverage area.
2. Three or more hours of locally produced programming. 4 points. An LPTV that provides at least three hours per week of locally produced programming shall be awarded four points. The Commission, in its proceeding to establish a Class A television service, determined that LPTVs can provide a valuable public service for their local community by programming locally produced shows dealing with issues of interest and concern to their local community Establishment of a Class A Television Service, Report & Order (April 4, 2000), para. 16. This is a unique requirement among all broadcast services and an area in which LPTVs often excel Comparative Standards for Noncommercial Educational Applicant, Report & Order, (April 21, 2000) (“NCE Report & Order”) para.11. Like Class As, Many LPTVs also provide three or more hours per week of locally produced programming. This provides a valuable source of information for the often niche or underserved market that LPTVs so often reach. As a result, this type of programming should be encouraged by the Commission and should be a priority in determining which of several competing applicants should be awarded a displacement construction permit.

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<sup>4</sup> See 47 C.F.R Section 74.710. The protected contours for LPTVs are the 43 dBu contour for channels 2-6, 48 dBu contour for channels 7-13 and the 51 dBu contour for channels 14 and above. Digital LPTV Order, 19 FCC Rcd 19331, para. 82.

3. Local Diversity of Ownership. 3 points. LPTV licensees that have no attributable interest in any other broadcast television station (full power, Class A or LPTV) or construction permit whose principal community contour overlaps that of the subject application shall be awarded three points. The Commission has long maintained the importance of diversity of ownership in local broadcast stations NCE Report & Order, para. 16.

Local diversity of ownership ensures that different voices are present in the market. As spectrum becomes ever more scarce, it is of mounting importance that the Commission work to ensure that the greatest number of voices possible are heard in each market. By prioritizing LPTVs that offer a unique voice in a market, the Commission will continue its goal of maximizing diversity and ensuring the free flow of ideas.

4. Efficient Use of Spectrum. 3 points. An LPTV that operates at least (i) 1 high definition and 2 standard definition channels or (ii) 4 standard definition channels on its licensed station shall receive three points. In its Broadband Plan, the Commission noted that many television broadcasters operated only one channel on their digital full power and Class A television stations, despite the possibility of more efficient uses of the scarce spectrum resource by operating multiple high definition and standard definition channels on their station Connecting America. The National Broadband Plan (2010) p. 91<sup>5</sup>. The Commission should encourage more efficient uses of spectrum in order to extend the use of this important national resource as much as possible.

LPTVs have often been leaders in maximizing the use of spectrum in order to ensure the economic viability of their operation and to reach the greatest number of viewers in what are often narrowly defined niche and underserved markets<sup>6</sup>. The LPTVs that efficiently utilize spectrum should be encouraged to continue to do so by offering this priority criteria when selecting

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<sup>5</sup> In the Broadband Plan, the Commission noted that at least at the time of writing, “(s)tations have launched approximately 1400 multicast channels or fewer than one per station on average.”

<sup>6</sup> It is not coincidental that in many markets, the most efficient spectrum use is carried out by LPTVs. LPTVs lead in spectrum efficiency because it helps build a sustainable television station, particularly when serving niche markets. For example, in the Phoenix DMA, Globe’s KFPB-LD operates six channels. No full power or Class A has more than four and most operate two. There are many other examples of LPTVs leading the way in spectrum efficiency. For example, in Columbus, Ohio, WCSN-LD operates six channels (with outreach to the local Somali community and Hispanics on several channels) while no other full power or Class A operates more than four.

between mutually exclusive applicants for a displacement channel.

5. Broadcasting 12 hours per day of programming serving underserved markets. 3 points. LPTVs that broadcast at least 12 hours per day of programming serving underserved television markets shall be awarded three points. Broadcasting in a language other than English automatically meets this criteria on a *prima facie* basis. To further encourage diversity of ideas and programming by those utilizing the limited spectrum resource, the Commission should award a priority to those stations that work to serve underserved markets.

LPTVs are uniquely suited to meeting the needs of a niche community and this criteria recognizes those that do. This is not a content or race-based criteria as it does not seek to select licensees based on either of those elements.<sup>7</sup> It also furthers the goals of achieving a market place of ideas open to all Americans.

To meet this criteria, LPTVs will have to make a showing that their programming is intended to meet the needs of underserved audiences and that they broadcast at least 12 hours per day of such programming. Each LPTV seeking to meet this criteria can provide a statement as to their intended audience and empirical evidence of the extent to which such market has historically been underserved by traditional media outlets and the extent to which it is served by the LPTV seeking to meet this criteria.

In addition, many LPTVs broadcast in languages other than English. Globe proposes that a *prima facie* case is established for bringing service to an underserved market when at least 12 hours per day of programming is broadcast in a language other than English. English has long been the dominant language of broadcast media in the United States See “Networks Struggle to Appeal to Hispanics,” New York Times, Aug. 5, 2012. Yet many Americans speak a language other than English as their first language<sup>8</sup>. LPTVs that seek to serve those that speak a language other than English can be said to be automatically

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<sup>7</sup> It therefore avoids the strict scrutiny requirement of Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 115 S. Ct. 2097 (1995).

<sup>8</sup> “Language Use and English Speaking Ability 2000,” US Census Bureau, (October 2003). As of the 2000 census (last available data) 47 million people spoke a language other than English at home in the United States. That equates to about 18 percent of the population.

meeting the criteria of serving underserved television markets and, absent other evidence to the contrary, should receive the points for this priority.

6. Network Service Not Otherwise Available in the Market. 2 points. If an LPTV provides a national television network that is not otherwise available in the DMA it shall be awarded two points.

Many LPTVs make it possible for major television networks to reach the public via free over the air television.<sup>9</sup> There are also many new nationwide television networks that also reach the public via LPTVs.<sup>10</sup>

This can be an important service provided by LPTVs. The definition of network should not be limited to only the so-called major networks as many new networks provide important alternative programming and viewpoints. A network for the purposes of this criteria should be any national network that reaches at least 50% of United States households.

## **Settlement**

15. At any time during the process set forth above, the applicants may advise the Commission they are negotiating or have reached settlements, and the Commission will withhold further processing based on the criteria for a reasonable period to allow for settlement. Settlement may include an agreement to share the channel or other arrangement in compliance with FCC rules. Monetary payments shall be limited to the applicant's reasonable and prudent expenses.

## **Summary**

16. The following summarizes the comments set forth herein.
  - A displacement window should be opened for LPTV stations as soon as practicable after repacking is complete and full power and Class A stations have had the opportunity to file for a substitute channel.

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<sup>9</sup> For example, in the Palm Springs DMA, only the NBC and ABC networks are carried by full power television broadcasters. CBS, Fox, Univision, Telemundo, CW, My Network TV, MeTV and several others are only available from LPTV and Class A stations.

<sup>10</sup> New networks include Spanish language network Mundofox, MeTV, Antenna TV and ThisTV which each carry classic TV programming. Most of these networks reach more than 70% of US households.



- Many LPTVs provide a unique service, particularly to niche and underserved markets, and therefore the public interest will be served by developing a set of criteria to avoid auctions in the event of mutual exclusivity among two or more applicants for a displacement channel.
- The priorities will be established by the extent to which an applicant meets certain criteria. Each applicant will be awarded a pre-determined number of points under each criteria. The points will be cumulative and the applicant receiving the most points will be tentatively entitled to the displacement channel without an auction. In the event of a tie, the channel will be subject to an auction. The criteria and point values are:
  1. First or second over the air TV service to a community. 4 points.
  2. Three hours or more per week of locally produced programming . 4 points.
  3. Local Diversity of Ownership. 3 points.
  4. Broadcasting 12 hours per day of programming serving underserved markets. 3 points.
  5. Efficient use of spectrum. 3 points.
  6. Providing Network Service Not Otherwise Available in the market. 2 points.
- Settlements may occur at any time and may include channel sharing.

Respectfully Submitted

Globe LPTV LLC

By: /s/ James L. Primm  
 James L. Primm  
 Its: Managing Member and Counsel

Globe LPTV LLC  
 Attn: James L. Primm  
 Managing Member and Counsel  
 41625 Eclectic suite J1  
 Palm Desert, CA 92260  
[jameslprimm@yahoo.com](mailto:jameslprimm@yahoo.com)